

JILL H. COFFMAN, NY BAR 2307098  
CHRISTY J. KWON, CA BAR 217186  
JOSEPH D. RICHARDSON, PA BAR 311147, Counsel for Service  
National Labor Relations Board, Region 20  
901 Market Street, Suite 400  
San Francisco, California 94103-1735  
Telephone Numbers: (415) 356-5186/356-5171

Attorneys for Petitioner

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH F. FRANKL, Regional Director of  
Region 20 of the National Labor Relations  
Board, for and on behalf of the NATIONAL  
LABOR RELATIONS BOARD,

Petitioner

vs.

MANAS HOSPITALITY LLC d/b/a  
HOLIDAY INN EXPRESS CALIFORNIA,  
Respondent

No.

**PETITION FOR INJUNCTION UNDER  
SECTION 10(j) OF THE NATIONAL  
LABOR RELATIONS ACT, AS  
AMENDED [29 U.S.C. § 160(j)]**

To the Honorable Judges of the United States District Court, Eastern District of  
California:

Joseph F. Frankl, Regional Director of Region 20 of the National Labor Relations  
Board (the Board) petitions this Court, for and on behalf of the Board, pursuant to  
Section 10(j) of the National Labor Relations Act, as amended [61 Stat. 149; 73 Stat. 544;  
29 U.S.C. § 160(j)] (the Act), for appropriate injunctive relief pending the final  
disposition of the matters herein involved now pending before the Board on an Amended

1 Consolidated Complaint and Notice of Hearing of the General Counsel of the Board  
2 charging that Manas Hospitality LLC d/b/a Holiday Inn Express Sacramento  
3 (Respondent),<sup>1</sup> is engaging in unfair labor practices in violation of Section 8(a)(1) and (5)  
4 of the Act [29 U.S.C. § 158(a)(1) and (5)]. In support thereof, Petitioner respectfully  
5 shows as follows:

6 1. Petitioner is the Regional Director of Region 20 of the Board, an agency  
7 of the United States Government, and files this petition for and on behalf of the Board,  
8 which has authorized the filing of this petition.

9 2. Jurisdiction of the Court is invoked pursuant to Section 10(j) of the Act,  
10 which provides, *inter alia*, that the Board shall have power, upon issuance of a complaint  
11 charging that any person has engaged in unfair labor practices, to petition any United  
12 States district court within any district wherein the unfair labor practices in question are  
13 alleged to have occurred or wherein such person resides or transacts business, for  
14 appropriate temporary injunctive relief or restraining order pending final disposition of  
15 the matter by the Board.

16 3. On May 17, 2016, the Unite Here Local 49 (the Union), filed a charge in  
17 Board Case 20-CA-76428 alleging that Respondent is engaged in unfair labor practices in  
18 violation of Section 8(a)(1) of the Act. The Union filed a first-amended charge in Board  
19 Case 20-CA-176428 on June 2, 2016, and a second-amended charge on October 20,  
20 2016. On June 21, 2016, the Union filed a second charge against Respondent in Board  
21 Case 20-CA-178861 alleging further violations of Section 8(a)(1) of the Act. The Union  
22 filed a first-amended charge in Case 20-CA-178861 on October 20, 2016. On June 21,

---

23 <sup>1</sup> Respondent is referred to in the Complaint as “Respondent Manas.”  
24

1 2016, the Union filed a third charge against Respondent in Board Case 20-CA-182449  
2 alleging violations of Section 8(a)(5) of the Act. The Union filed a first-amended charge  
3 in Case 20-CA-182449 on October 20, 2016.

4 4. The aforesaid charges were referred to Petitioner as Regional Director of  
5 Region 20 of the Board.

6 5. After an investigation of all three charges, during which all parties had an  
7 opportunity to submit evidence, Petitioner, pursuant to Section 10(b) of the Act [29  
8 U.S.C. § 160(b)], issued an Order Consolidating Cases, Amended Consolidated  
9 Complaint and Notice of Hearing (the Complaint) alleging, *inter alia*, that Respondent<sup>2</sup> is  
10 engaging in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act.  
11 Respondent filed an Answer to the Complaint dated November 9, 2016.

12 6. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, true copies  
13 of the Complaint (Exh. 1), the Answer (Exh. 2) the original charge, first-amended charge  
14 and second-amended charge in case 20-CA-176428 (Exh. 3(a)–(c)), the original charge  
15 and first- amended charge in case 20-CA-178861 (Exh. 4(a)–(b)), and the original charge  
16 and first- amended charge in case 20-CA-182449 (Exh. 5(a)–(b)) are attached hereto and  
17 are incorporated herein as though fully set forth.

18 7. The merits of the Complaint are scheduled to be heard before an  
19 Administrative Law Judge of the Board in San Francisco, California, and subsequently in  
20 Sacramento, California, beginning on November 29, 2016. (Exh. 1 at 12)

21  
22 \_\_\_\_\_  
23 <sup>2</sup> The Complaint alleges that Respondent is a single and/or joint employer with its  
24 parent company Kalthia Group Hotels, Inc. for remedial purposes, but Petitioner  
seeks injunctive relief solely against Respondent Manas.

1           8.       There is a strong likelihood that, in the underlying administrative  
2 proceeding in Board Cases 20-CA-176428, 20-CA-178861, and 20-CA-182449,  
3 Petitioner will establish that the allegations set forth in the Complaint are true and that  
4 Respondent engaged in, and is engaging in, unfair labor practices in violation of Section  
5 8(a)(1) and (5) of the Act.

6           9.       Respondent has refused to settle or remedy the unfair labor practices  
7 alleged in the Complaint.

8           10.      More specifically, as shown by the affidavits attached hereto as Exhibit 7  
9 and made a part hereof, Petitioner asserts that there is a strong likelihood that Petitioner  
10 will establish the following allegations which are the subject of this petition:

11                 (a)      About July 31, 2015, Respondent, purchased the business of  
12 Hospitality Sacramento L.P. d/b/a Holiday Inn Express (the Predecessor), and since then  
13 has continued to operate the business of the Predecessor in basically unchanged form, and  
14 has employed as a majority of its employees individuals who were previously employees  
15 of the Predecessor. (Exh. 1, ¶ 2(a))

16                 (b)      Based on the operations described above in subparagraph 10(a),  
17 Respondent has continued the employing entity and is a successor to the Predecessor.  
18 (Exh. 1, ¶ 2(b))

19                 (c)      At all material times, Respondent has been a limited liability  
20 corporation with an office and place of business at 728 16<sup>th</sup> Street, Sacramento,  
21 California (the Hotel) and has been engaged in the business of operating hotels that provide  
22 food and lodging. (Exh. 1, ¶ 3(a))

1 (d) During the calendar year ending December 31, 2015, in conducting  
2 its operations described above in subparagraph 10(c), Respondent derived gross revenues in  
3 excess of \$500,000 and purchased and received at the Hotel goods valued in excess of \$5,000  
4 from points outside the State of California. (Exh. 1, ¶ 3(b))

5 (e) At all material times, Respondent has been an employer engaged in  
6 commerce within the meaning of Section 2(2), (6) and (7) of the Act. (Exh. 1, ¶ 4(a))

7 (f) At all material times, the Union has been a labor organization within  
8 the meaning of Section 2(5) of the Act. (Exh. 1, ¶ 5)

9 (g) At all material times, the following individuals held the titles set forth  
10 opposite their respective names and have been supervisors of Respondent within the meaning  
11 of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of  
12 the Act:

13	Elsa Gutierrez	-	Housekeeping Manager
14	Sanjita Nand	-	Human Resources Manager
15	Mohammed Nazeem	-	General Manager

16 (Exh. 1, ¶ 6(a))

17 (h) At all material times, the following individuals held the positions set  
18 forth opposite their respective names and acted as agents of Respondent within the meaning  
19 of Section 2(13) of the Act:

20	Rajneel (Raj) Singh	-	Front Desk Employee
21	Olga Villa	-	Housekeeping Employee

22 (Exh. 1, ¶ 6(b))

23 (i) Respondent, by Housekeeping Manager Elsa Gutierrez:

24

1 (i) About March 3, 2016, in the breakfast area of the Hotel,  
2 instructed employees not to participate in union activities and threatened employees that  
3 Respondents had a plan to get rid of the Union;

4 (ii) About April 1, 2016, in the presence of Human Resources  
5 Manager Sanjita Nand and General Manager Mohammed Nazeem, during an interview at  
6 the Hotel, instructed employees not to talk to Union representatives or sign anything to  
7 join the Union;

8 (iii) On various dates unknown to the General Counsel of the  
9 Board (General Counsel) but known to Respondents between April 4,  
10 2016 and May 10, 2016, in various guest rooms at the Hotel:

11 a. instructed employees not to talk to Union  
12 representatives or join the Union;

13 b. promised employees better benefits if they did  
14 not support the Union; and

15 c. impliedly threatened employees with discharge  
16 for supporting the Union;

17 (iv) On a date unknown to the General Counsel but known to  
18 Respondents in early May 2016, in the room of the Hotel where employees record their  
19 work hours, instructed employees not sign anything for a Union representative;

20 (v) About May 9, 2016, in Human Resources Manager Sanjita  
21 Nand's Office with Nand present, solicited employees to sign a petition to decertify the  
22 Union;  
23  
24

1 (vi) About May 9, 2016, in the Housekeeping office, with  
2 Human Resources Manager Nand present, promised employees that they would never be  
3 without work if they trusted her (Gutierrez) and impliedly threatened employees with  
4 discharge for supporting the Union;

5 (vii) About May 9, 2016, in a guestroom on the 4<sup>th</sup> floor,  
6 solicited employees to sign a petition to decertify the Union by arranging for employees  
7 to meet with petition solicitor Raj Singh;

8 (viii) About May 9, 2016, by telephone:

- 9 a. interrogated employees about their union activities;  
10 b. created the impression that employees' union activities  
11 were under surveillance; and  
12 c. impliedly threatened employees with unspecified  
13 reprisals for supporting the Union.  
14

15 (ix) About May 10, 2016, in the Housekeeping office:

- 16 a. instructed employees to sign a petition to decertify the  
17 Union;  
18 b. threatened to discharge employees who did not sign it;  
19 and  
20 c. arranged for employees to meet with petition solicitor  
21 Olga Villa.

22 (Exh. 1, ¶ 10(a))  
23  
24

1 (j) About May 10, 2016, Respondent, by General Manager  
2 Mohammed Nazeem, in his office, with Housekeeping Manager Gutierrez present:

3 (i) interrogated employees about their union activities; and

4 (ii) created the impression that employees' union activities were  
5 under surveillance.

6 (Exh. 1, ¶ 10(b))

7 (k) About May 9, 2016, Respondent, by Raj Singh, in a housekeeping  
8 closet on the 4<sup>th</sup> floor, solicited employees to sign a decertification petition. (Exh. 11(a))

9 (l) About May 10, 2016, Respondent, by Olga Villa, in a guestroom,  
10 solicited employees to sign a decertification petition. (Exh. 11(b))

11 (m) The following employees of Respondent (the Unit) constitute a  
12 unit appropriate for the purposes of collective bargaining within the meaning of Section  
13 9(b) of the Act:

14 All employees employed by Respondent at the facility located at 728  
15 Sixteenth Street, Sacramento, California in the following classifications:  
16 Bartender; Bar Helper; Food/Beverage Server; Busperson;  
17 Hostperson/Cashier; Head Banquet Server; Cook; Fry; Pantry; Kitchen  
18 Worker; Porter; Bellperson; PBX; Guest Room Attendant; Houseperson;  
Inspector/Inspectress; Laundry Worker; Head Laundry; Room  
Clerk/Reservation Clerk; Night Auditor; Head Gardener; Gardener; Rug  
Shampooer; and Handyman.

19 (Exh. 1, ¶ 12(a))

20 (n) At all material times prior to about July 31, 2015, the Union had  
21 been the exclusive collective-bargaining representative of the Unit employees employed  
22 by the Predecessor, and during that time the Union had been recognized as such  
23 representative by the Predecessor. This recognition was embodied in successive  
24



1 collective-bargaining agreements, the most recent of which was effective from June 1,  
2 2006 to December 31, 2009. (Exh. 1, ¶ 12(b))

3 (o) At all materials times prior to about July 31, 2015, based on  
4 Section 9(a) of the Act, the Union was the exclusive collective-bargaining representative  
5 of the Unit employed by the Predecessor. (Exh. 1, ¶ 12(c))

6 (p) At all times since about July 31, 2015, based on the facts and  
7 conduct described above in subparagraphs 10(a), 10(b), 10(m) through 10(o), and based  
8 on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining  
9 representative of the Unit. (Exh. 1, ¶ 12(d))

10 (q) At various times from about September 2015 through May 2016,  
11 Respondents and the Union met for the purposes of negotiating a first collective-  
12 bargaining agreement. (Exh. 1, ¶ 13(a))

13 (r) During the period described above in subparagraph 10(q),  
14 Respondents: bargained with no intention of reaching agreement; refused to bargain over  
15 mandatory subjects of bargaining; engaged in regressive bargaining; supported efforts to  
16 decertify the Union as the bargaining representative of the Unit, as described above in  
17 subparagraphs 10(i) through 10(l); and denigrated the Union in the eyes of Unit  
18 employees. (Exh. 1, ¶ 13(b))

19 (s) By its overall conduct, including the conduct described above in  
20 subparagraphs 10(i) through 10(l) and subparagraph 10(r), Respondent has failed and  
21 refused to bargain in good faith with the Union as the exclusive collective-bargaining  
22 representative of the Unit. (Exh. 1, ¶ 13(c))

1 (t) By the conduct described above in subparagraphs 10(i) through  
2 10(l), Respondent has been interfering with, restraining, and coercing employees in the  
3 exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of  
4 the Act. (Exh. 1, ¶ 14)

5 (u) By the conduct described above in subparagraph 10(r), Respondent  
6 has been failing and refusing to bargain collectively and in good faith with the exclusive  
7 collective-bargaining representative of the Unit employees within the meaning of Section  
8 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act. (Exh. 1, ¶ 15)

9 (v) The unfair labor practices of Respondent described above in affect  
10 commerce within the meaning of Section 2(6) and (7) of the Act [29 U.S.C. § 152(6) &  
11 (7)]. (Exh. 1, ¶ 16)

12 11. It may fairly be anticipated that, unless enjoined, Respondent will repeat  
13 the conduct set forth in subparagraphs 10(i) through 10(l) and subparagraph 10(r), or  
14 similar or like acts in violation of Section 8(a)(1) and (5) of the Act.

15 12. Upon information and belief, unless the aforesaid unfair labor practices  
16 are immediately enjoined and appropriate injunctive relief granted, Respondent's  
17 violations of the Act will continue, with the result that enforcement of important  
18 provisions of the Act and of the public policy will be frustrated before Respondent can be  
19 placed under legal restraint through the administrative procedures set forth in the Act  
20 consisting of a Board Order and an Enforcement Decree of a United States Court of  
21 Appeal. It is likely that substantial and irreparable harm will result to Respondent's  
22 employees and their statutorily protected right to have their collective-bargaining  
23 representative represent their interests through good-faith collective bargaining unless the  
24

1 aforesaid unfair labor practices are immediately enjoined and appropriate relief granted.  
2 If it becomes necessary to seek enforcement of a Board Order by the Court of Appeals, it  
3 may be years before the unlawful conduct is restrained. Unless injunctive relief is  
4 immediately obtained, the effectiveness of the Board's final order will likely be nullified,  
5 the administrative procedure rendered meaningless, and Respondent will continue in its  
6 above-described unlawful conduct during the pendency of the proceedings before the  
7 Board, with the result that, during this period, the rights of Respondent's employees  
8 guaranteed and protected by Section 7 of the Act [29 U.S.C. § 157] to join unions and  
9 bargain collectively in good faith through representatives of their own choosing will be  
10 frustrated and denied. Moreover, by drawing out collective-bargaining negotiations and  
11 taking negotiating positions calculated to frustrate the bargaining process during a period  
12 of particular vulnerability for any labor organization, while at the same time unlawfully  
13 supporting and coercing employees to support an effort to remove the Union, Respondent  
14 has conveyed to its employees that the Union is powerless to effectively represent them,  
15 and that the government is powerless to restrain such conduct. These actions inevitably  
16 undermine a union's support. Only by requiring Respondent to affirmatively repudiate  
17 its threats to employees and its unlawful support for the decertification campaign, while  
18 requiring it to bargain in good faith with the Union, can such irrevocable damage to the  
19 bargaining process be prevented.

20 13. Upon information and belief, in balancing the equities in this matter, the  
21 harm to the Union, the employees, the public interest, and the purpose and policies of the  
22 Act if injunctive relief is not granted, greatly outweighs any harm that Respondent may  
23 suffer if such injunctive relief is granted.  
24

1           14.     Upon information and belief, to avoid the serious consequences referred to  
2 above, it is essential, just and proper, and appropriate for the purposes of effectuating the  
3 remedial purposes of the Act and avoiding substantial and irreparable injury to such  
4 policies, the public interest, the employees, and the Union, and in accordance with the  
5 purposes of Section 10(j) of the Act that, pending final disposition by the Board,  
6 Respondent be enjoined and restrained as herein prayed.

7           15.     In due consideration of the foregoing, on November 18, 2016, the Board  
8 authorized the Petitioner, as the designated representative of the General Counsel of the  
9 National Labor Relations Board, to file the instant Petition. (Exh. 6)

10           WHEREFORE, Petitioner respectfully requests the following:

11           (1)     That the Court issue an order directing Respondent to appear before the  
12 Court, at a time and place fixed by the Court, and show cause, if any there be, why,  
13 pending final disposition of the matters herein involved, now pending before the Board,  
14 Respondent, its officers, representatives, supervisors, agents, servants, employees,  
15 attorneys and all persons acting on its behalf or in participation with it, should not be  
16 enjoined and restrained from the acts and conduct described above, similar or like acts, or  
17 other conduct in violation of Section 8(a)(1) and (5) of the Act, or repetitions thereof, and  
18 that the instant Petition be disposed of on the basis of the affidavits, without oral  
19 testimony, absent further order of the Court.

20           (2)     That the Court order and direct Respondent, its officers, representatives,  
21 supervisors, agents, servants, employees, attorneys and all persons acting on its behalf or  
22 in participation with it, to cease and desist from the following acts and conduct, pending  
23 the final disposition of the matters involved now pending before the Board:

1 (a) Engaging in contract negotiations with the Union with no intention  
2 of reaching an agreement by: refusing to bargain over mandatory subjects of  
3 bargaining; engaging in regressive bargaining; threatening employees with  
4 discharge and other unspecified consequences if they supported the Union;  
5 promising employees continued work and other unspecified benefits if they  
6 signed a petition to decertify the Union as the collective bargaining representative  
7 of the Unit; and denigrated the Union in the eyes of unit employees;

8 (b) Instructing employees not to talk to Union representatives;

9 (c) Instructing employees not to join the Union;

10 (d) Promising Employees better benefits if they did not support the  
11 Union;

12 (e) Threatening Employees with unspecified consequences if they  
13 supported the Union;

14 (f) Threatening Employees with discharge for supporting the Union;

15 (g) Soliciting employees to sign a petition to decertify the Union;

16 (h) Threatening employees with discharge if they refused to sign a  
17 petition to decertify the Union;

18 (i) Creating the impression that employees' union activities were  
19 under surveillance;

20 (j) Interrogating employees about their union activities;

21 (k) In any like or related manner interfering with, restraining or  
22 coercing employees in the exercise of their Section 7 rights.

23

24

1 (3) That the Court further order Respondent, its officers, representatives,  
2 supervisors, agents, servants, employees, attorneys and all persons acting on its behalf or  
3 in participation with it, to take the following steps pending the final disposition of the  
4 matters herein involved now pending before the Board:

5 (a) On request, bargain in good faith with the Union as the exclusive  
6 collective-bargaining representative of the Unit concerning wages, hours, and other terms  
7 and conditions of employment, and put in writing and sign any agreement reached;

8 (b) Post copies of the District Court's Order at the Holiday Inn  
9 Express Sacramento, located at 728 16th Street in Sacramento, California, in English and  
10 Spanish in all places where other notices to employees are customarily posted; maintain  
11 these postings during the Board's administrative process free from all obstructions and  
12 defacements and grant to agents of the Board reasonable access to these facilities in order  
13 to monitor compliance with the posting requirement;

14 (c) On working time hold a mandatory meeting or meetings for  
15 employees, wherein the General Manager of the Employer shall read a copy of the  
16 District Court's order in both English and Spanish to all Unit employees in the presence  
17 of a Board Agent or, in the alternative, wherein a Board Agent shall read the District  
18 Court's order in English and Spanish to all unit employees in the presence of the  
19 Employer's managers and supervisors;

20 (d) Within twenty (20) days of the issuance of the District Court's  
21 Decision and Order, file with the District Court and serve upon the Regional Director of  
22 Region 20 of the Board, a sworn affidavit from a responsible official describing with  
23

24

1 specificity the manner in which Respondent has complied with the terms of the Court's  
2 decree, including the locations of the posted documents.

3 (4) That upon return of said Order to Show Cause, the Court issue an order  
4 enjoining and restraining Respondent as prayed and in the manner set forth in Petitioner's  
5 proposed temporary injunction lodged herewith.

6 (5) That the Court grant such other and further temporary relief that may be  
7 deemed just and proper.

8 (6) That the Court grant expedited consideration to this petition, consistent  
9 with 8 U.S.C. § 1657(a) and the remedial purposes of Section 10(j) of the Act.

10 Pursuant to Local Rule 231(d)(3) [Fed. R. Civ. P. 65(d)(3)], Petitioner does not  
11 desire oral witness testimony at the hearing and estimates that the amount of time  
12 required for the hearing will be one hour.

13  
14 DATED AT San Francisco, California, this 23d day of November, 2016.

15  
16  
17 /s/ Joseph D. Richardson

18 JOSEPH D. RICHARDSON  
19 Attorney for Petitioner  
20 NATIONAL LABOR RELATIONS BOARD  
901 MARKET STREET, SUITE 400  
SAN FRANCISCO, CA 94103

21 ATTORNEYS FOR PETITIONER:

22 JILL H. COFFMAN  
Regional Attorney, Region 20

23 CHRISTY J. KWON  
24 Supervisory Attorney, Region 20